BANKRUPTCY—PREFERENCES.—In our discussion of the ruling in *Pirie* v. *Chicago Title and Trust Company, ante* pp. 438 and 439, in which the United States Supreme Court held that a payment of money by an insolvent debtor to a creditor within four months of the filing of his petition, the debtor not intending to give nor the creditor to receive a preference, nevertheless constituted a preference within the meaning of the Bankrupt Act and must be surrendered as a condition precedent to the proving of the balance of the claim, we noted the fact that the court left open the question as to the effect of a payment made prior to the four months. *Re Jones*, 4 Am. B. R. 563, 110 Fed. 736, was cited to the effect that the creditor must surrender *all* payments received after debtor's insolvency, whether within the four months or not. This decision was made before that in the *Pirie* case, *supra*. But in *Re Abraham Steers Lumber Co.*, 110 Fed. 738, the same ruling is made in the light of the *Pirie* case, Judge Thomas, of the United States District Court for the Southern District of New York, saying:

"The court is constrained to the conclusion that there is no time limit to the operation of section 60a. The suggestion of the Supreme Court in *Carson, Pirie, Scott & Co.* v. *Chicago Title and Trust Co.*, 5 Am. Bankr. R. 814, 21 Sup. Ct. 906, tends in such direction; and the discussion of Judge Lowell in *Re Jones*, 4 Am. Bankr. R. 563, 110 Fed. 736, states the view that may be adopted most reasonably. Some limitation of time upon the operation of section 60a may be advisable, but an examination of the act and of the different parts thereof fails to disclose that it exists. The labor, credited August 28th, and amounting to $37.17, may be offset, as it cannot be regarded as a transfer of property."

In the *Jones* case, *supra*, Lowell, J., of the United States District Court for Massachusetts, had concluded his opinion thus:

"If the court is compelled to choose between a construction which requires all preferences to be surrendered before proof whenever they are received, whether the creditor has knowledge of the intent to prefer or not, and a construction which permits the preferred creditor to prove, while retaining a preference received more than four months before the filing of the petition, with full knowledge of the intent to prefer, I am brought to believe that the first construction is more consonant with the general spirit of the act. It cannot be said, indeed, that this construction is clear beyond a doubt, but it seems to me to result logically from the case cited, which I am bound to follow. Were I to form a bankrupt act as seemed to me best for the interests of the community, I might differ from Congress in some respects. That is not my office. If the construction thus put upon section 57g makes it a real menace to legitimate business, concerning which no opinion is expressed, it is from Congress that relief must be sought."

A further definition of what is *not* a "transfer of property" is given in *Re Steers Lumber Co., supra*, where an insolvent debtor performed labor for a creditor and was given credit therefor upon his indebtedness. *Held*, not a preference.

BANKRUPTCY—HOMESTEAD EXEMPTION.—An important ruling of the United States Circuit Court of Appeals for the Fourth Circuit (sitting at Richmond) was that rendered November 5, 1901, in *Moran* v. *King*, for a copy of the opinion in which we are indebted to the clerk of that court. It was held that a bankrupt who claims with his schedule of debts and assets a homestead exemption in less property than the maximum exemption allowed under the Virginia statute, cannot afterwards be permitted to amend his schedule and claim a larger exemption for the purpose of favoring certain creditors who hold notes waiving the homestead exemption.

Judge Boyd, delivering the opinion, refers to *Reid* v. *Bank*, 29 Gratt. 719, holding that the homestead privilege given by the constitution is a privilege personal to the debtor, to be exercised by him or not, as he may choose; that the homestead law, unlike the poor debtor law, does not execute itself, and that the exemption thereunder, again unlike that under the poor debtor law, can be waived. Citing *Linkenhoker* v. *Deitrick*, 81 Va. 54; *In re Solomon*, 2 Hughes, 164. Authorities are also cited to show that the policy of the homestead act is not the protection of the debtor, but of his family. *Sears* v. *Hanks*, 14 Ohio, 498; *Leavitt* v. *Metcalf*, 2 Vt. 342, 19 Am. Dec. 718; *Griffin* v. *Sutherland*, 14 Barb. (N. Y.), 456. The opinion continues:

"The bankrupt in this case, upon the facts set forth in his petition, seeks exemption for no such purpose, but avows the object of his petition to be to remove so much of his property as he can from the hands of the trustee in bankruptcy, in order that it may go to the benefit of certain creditors holding what are called waiver notes.

"'While the exemption laws are to be construed liberally so as to carry with them the benevolent policy of the legislature, debtors claiming their benefit must bring themselves at least within the spirit of their provisions.' Am. & Eng. Enc. Law, 2d ed., Vol. 12, page 77.

"'As a general rule, if a person who holds a homestead and is under no disability to assert it, fails to do so at the time and in the manner provided by law, in any action or proceeding involving the right, he will be deemed to have waived his exemption.' Am. & Eng. Enc. Law, Vol. 15, page 638. Cases cited in note 7.

"We think this doctrine is in entire harmony with the exemption laws of Virginia as construed by the highest court of the State. The claim to exemptions under the Constitution and statute law of the State is a privilege which the debtor may exercise or not as he chooses, and it being left to his option, he may claim as exempt property to the full amount of two thousand dollars, or for a less amount, if he may see proper. In this case the bankrupt has exercised his privilege, has selected the property which he claimed as exempt, and, with the exception of the property so claimed, the title to the estate has vested in the trustee. We think the bankrupt is concluded, and should not be allowed to amend his schedules as prayed for."

BANKRUPTCY.—Among other recent important rulings in bankruptcy are the following:

Omission from Schedule.—Property must have been knowingly and fraudulently omitted from the schedule of bankrupt's assets to defeat his right to a discharge under section 29b, clause 2, Act 1898, and the objecting creditor must establish these essential ingredients of the offense. *In re Eaton*, 110 Fed. 731.

Husband and Wife.—Contracts between husband and wife for the loan of money are held invalid by the State courts of Massachusetts as being contrary to public policy. And the Federal courts hold accordingly that a claim of a wife against the estate of her bankrupt husband for money lent is not provable. *In re Talbot*, 110 Fed. 924.

Rents of Mortgaged Property.—When mortgaged property comes into possession of a trustee in bankruptcy, and before action taken by mortgagee to secure possession of the property, the rents thereon accruing after adjudication, belong to the trustee. *In re Dole*, 110 Fed. 927.

Comity Between State and Federal Courts.—The jurisdiction of a State court, which has appointed a receiver in insolvency proceedings, is ousted by bankruptcy proceedings properly instituted in a Federal court. The receiver of the bankrupt